

(17,365.)

## SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 261.

ROBERT RAE, JR., AND ELIZABETH RAE, HIS WIFE,  
PLAINTIFFS IN ERROR,

*vs.*

THE HOMESTEAD LOAN AND GUARANTEE COMPANY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF ILLINOIS.

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*a* In the Supreme Court of Illinois, Northern Division, October Term, A. D. 1898.

ROBERT RAE, JR., and ELIZABETH RAE, His Wife, }  
*vs.* } No. 489.  
 HOMESTEAD LOAN & GUARANTEE COMPANY. }

Appeal from appellate court, first district.

*Petition for Writ of Error, with Assignment of Errors.*

To the Honorable Joseph N. Carter, chief justice of the supreme court of the State of Illinois:

Now comes the plaintiffs in error, Robert Rae, Jr., and Elizabeth Rae, his wife, and respectfully show and represent that manifest error appears on the face of the record in this cause, and make the following assignment of errors:

*b* First. The supreme court of Illinois erred in affirming said judgment and decree of the appellate court for the first district, affirming a decree of the circuit court of Cook county, in the State of Illinois, which said latter court overruled plaintiffs' in error demurrer filed in the said circuit court of Cook county on the 11th day of February, A. D. 1897, to the said then complainant's bill, and entering a decree *pro confesso* for the principal sum and interest claimed to be due and payable in gold coin of the United States on the allegations of the bill, against the provisions of the acts of Congress in such cases made and provided.

Second. The said court erred in not reversing said decree of the said appellate court and said circuit court of Cook county, in sustaining the demurrer to said bill, and in not dismissing said bill for want of equity.

Third. The said court erred in not dismissing said bill for the several reasons set up in said demurrer.

Fourth. The court erred in not dismissing said bill because said bill claimed that there was due said complainant the sum found to be due complainant by the terms of the mortgage and bond in gold coin of the United States of the present standard of weight and fineness.

Fifth. The court erred in enforcing a forfeiture in decreeing the whole sum, principal and interest, due at the election of the complainant because the defendants had not paid the interest in gold coin of the United States of the present standard of weight and fineness.

Sixth. The court erred in sustaining the then complainant's bill because the said bill averred that the then said defendants became indebted to the complainant in the sum of four thousand nine hundred dollars in gold coin of the United States of America of the then standard weight and fineness, without alleging the then defendants received such gold coin of the complainant.

Seventh. The court erred in sustaining the then complainant's

bill on the allegation that there was then due upon said loan, in gold coin of the United States of the present standard of weight and fineness, the sum of five hundred and ninety dollars and four cents (\$590.04), being the aggregate of the said several installments of said loan due and payable, as aforesaid; also that there is due on said loan four thousand five hundred and nineteen dollars and forty-four cents (\$4,519.44) in accordance with the terms of said mortgage.

Wherefore plaintiffs in error pray that a writ issue to review said judgment and decree of said supreme court of said State of Illinois, and that the said judgment of said supreme court of said State so rendered against them in this cause on the 22nd day of February, A. D. 1899, be reversed, and that a decree may be entered therein that said decree in the said supreme court of Illinois be reversed and annulled, and that said bill of complaint be dismissed for want of equity, and that the said supreme court be commanded to reverse the judgment of said trial court, to wit, said circuit court of Cook county, Illinois, and the affirmation of the same of the supreme court of Illinois.

ROBERT RAE,

*Solicitor for Plaintiffs in Error.*

It is ordered that a writ of error issue in the above-entitled cause, as prayed in the petition of plaintiffs in error.

JOSEPH N. CARTER,

*Chief Justice of the Supreme Court of the State of Illinois.*

d UNITED STATES OF AMERICA, ss :

The President of the United States to the honorable the judges of the supreme court of Illinois, Greeting :

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court, before you or some of you, between Robert Rae, Jr., and Elizabeth Rae, his wife, vs. Homestead Loan & Guarantee Company, which — in the said supreme court of the State of Illinois, before you, being the highest court of law or equity in said State in which a decision could be had in said suit, wherein it was specially set up and claimed by said Robert Rae, Jr., and Elizabeth Rae, his wife, plaintiffs in error, in their behalf, a right and privilege under article I, section 8, paragraph 5, of the Constitution of the United States, and a right and privilege under the act of Congress of February 28, 1878, entitled "An act to authorize the coinage of the standard silver dollar and to restore its legal-tender character," and a right and privilege under section 2 of the act of Congress of July 14, 1890, directing the purchase of silver bullion, etc., and a right and privilege under an act of Congress of November 1, 1893, entitled "An act to repeal a part of said act of July 14, 1890," etc., a manifest error hath happened, to the great damage of the said Robert Rae, Jr., and Elizabeth Rae, his wife, as by their complaint appears, we, being willing that error, if any hath been, should be duly corrected and

full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

JAMES T. JONES,

*Clerk of the Circuit Court of the United States  
for the Circuit Dist. of Illinois.*

Allowed by—

JOSEPH N. CARTER,

*Chief Justice Supreme Court of Illinois.*

In the Supreme Court of Illinois.

ROBERT RAE, JR., and ELIZABETH RAE, His Wife, }  
vs.  
HOMESTEAD LOAN AND GUARANTEE COMPANY. }

Appeal from appellate court, first district.

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing writ of error for the defendants in error was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this twenty-fifth day of March, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,  
*Clerk of Supreme Court.*

f UNITED STATES OF AMERICA, ss :

To the Homestead Loan and Guarantee Company, Greeting :

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, in the District of Columbia, within 30 days from the date hereof, pursuant to a writ of error which has been allowed and filed in the office of the clerk of the Supreme Court of the United States, wherein Robert Rae, Jr., and Elizabeth Rae, his wife, are plaintiffs in error and you are defendant in error, and

to show cause, if any there be, why the judgment and decision in the said writ mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness Joseph N. Carter, chief justice of the supreme court of the State of Illinois, this 20th day of March, A. D. 1899, and of the Independence of the United States the one hundred and twenty-third.

JOSEPH N. CARTER,  
*Chief Justice Supreme Court.*

Received a copy of the foregoing citation this first day of April, 1899.

HOMESTEAD LOAN & GUARANTY CO.,  
By WILSON, MOORE & McILVAINE,  
*Its Solicitors.*

g In the Supreme Court of Illinois.

ROBERT RAE, JR., and ELIZABETH RAE,	}	Appeal from Appellate Court, First District.
His Wife,		
vs.		
HOMESTEAD LOAN AND GUARANTEE COM-	}	
pany.		

I, Christopher Mamer, clerk of said supreme court, do hereby certify that on the twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-nine, a copy of the foregoing citation was lodged in my office, at Springfield, Illinois.

Witness my hand and the seal of said court this twenty-fifth day of March, A. D. 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 23, 1818.]

CHRISTOPHER MAMER,  
*Clerk of Supreme Court.*

h In the Supreme Court of Illinois.

ROBERT RAE, JR., and ELIZABETH RAE,	}	Appeal from Appellate Court, First District.
His Wife,		
vs.		
HOMESTEAD LOAN AND GUARANTEE COM-	}	
pany.		

I, Christopher Mamer, clerk of the supreme court of Illinois, elected for the northern grand division, and keeper of the records and files thereof, by virtue of the foregoing writ of error and in obedience thereto, do hereby certify that the following pages, numbered from one (1) to fifty-one (51), inclusive, contain a true and complete transcript and copy of the record and proceedings had in said court in the case which is above entitled and of the whole thereof, including the opinion of the court, as the same remain of record and on file in my said office.

Seal of the Supreme Court,  
State of Illinois, Aug. 23,  
1818.

In testimony whereof I have hereunto set my hand and caused the seal of said supreme court of Illinois to be hereunto affixed, at Springfield, this twentieth day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

CHRISTOPHER MAMER,

*Clerk of Supreme Court.*

I At a supreme court begun and held at Springfield on Tuesday, the fourth day of October, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Edward A. Baxter, sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered that afterwards, to wit, on the fifth day of October, A. D. 1898, there was filed in the office of the clerk of said court a certain transcript of the record and proceedings of the circuit court of Cook county and of the appellate court of Illinois, first district; which said transcripts are in the words and figures following, viz:

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#### UNITED STATES OF AMERICA.

STATE OF ILLINOIS, }  
Cook County, } ss:

Pleas before the Honorable John Gibbons, one of the judges of the circuit court of Cook county, at a term thereof begun and held at the court-house, at Chicago, in said county and State, on the third Monday (being the fifteenth day) of February, in the year of our Lord one thousand eight hundred and ninety-seven, and of the Independence of the United States the one hundred and twenty-first.

Present: The Honorable John Gibbons, one of the judges of the circuit court of Cook county, State of Illinois; Charles S. Deneen, State's attorney; James Pease, sheriff.

Attest: JOHN A. COOKE, *Clerk.*

Be it remembered that heretofore, to wit, on the 16th day of October, A. D. 1896, a certain bill of complaint was filed in the office of the clerk of said court, and thereupon there issued out of said office and under the seal thereof the people's writ of summons directed to the sheriff of Cook county to execute; which said bill and said writ, together with the return of the sheriff thereon endorsed, are in the words and figures following, to wit:

STATE OF ILLINOIS, }  
 County of Cook, } ss :

In the Circuit Court of Cook County, to the November Term, A. D. 1896.

To the honorable judges of said court, in chancery sitting :

3 Complainant, Homestead Loan and Guaranty Company, respectfully states that it is a corporation organized and existing under the laws of the State of Illinois.

Complainant states that heretofore, on or about the 1st day of August, 1895, the defendant Robert Rae, Junior, became indebted to complainant in the sum of forty-nine hundred dollars (\$4,900.00), in gold coin of the United States of America of the then standard weight and fineness, owing the amount of a loan made by complainant to the said defendant, and thereupon the said Robert Rae, Jr., to evidence and secure the payment of the said sum, executed and delivered to complainant a bond bearing date the first day of August, 1895; which bond is in the words and figures following, to wit:

Know all men by these presents, that I, Robert Rae Jr., of the city of Chicago in the county of Cook and State of Illinois am held and firmly bound unto Homestead Loan and Guaranty Company, in the sum of ninety-eight hundred dollars (\$9,800.00) in gold coin of the United States of America, of the present standard weight and fineness, to be paid to said Homestead Loan and Guaranty Company, or its agent, attorney, successor or assigns; for which payment well and truly to be made, I bind myself, my heirs, executors and administrators, jointly and severally, firmly by these presents.

Witness my hand and seal this first day of August, A. D. 1895.

The condition of the above obligation is such that whereas, Homestead Loan and Guaranty Company (hereinafter called the party obligee) has advanced to the said Robert Rae Jr. (hereinafter called the party obligor) the principal sum of forty-nine hundred dollars (\$4,900.00), which said sum, together with interest thereon, costs, charges and expenses, amounting in the aggregate to the sum of

4 seventy-eight hundred sixty-seven dollars and twenty cents (\$7,867.20) is to be repaid within ten years from date in gold coin as aforesaid, in monthly instalments of sixty-five dollars and fifty-six cents (\$65.56) each, payable on the first day of each calendar month during the said term of ten years (except that payments falling due on Sunday shall be deemed payable on the day following), with interest on said instalments after they fall due, at the highest rate which is now in such case lawful to contract for: And, whereas, a deed of trust of even date herewith has been given to the Chicago Title and Trust Company as trustee conveying certain real estate in said deed of trust described as further security for the full performance of this obligation :

Now, therefore, in consideration of the premises, if the party obligor shall pay all the instalments aforesaid as they fall due, with



interest as herein provided, or if the said Robert Rae Jr. shall die within the said term of ten years, except as hereinafter provided, and satisfactory proof of death shall be made to said obligee, its agent, attorney, successor or assigns, and all instalments due hereon prior to such death and within one month thereafter, with interest as aforesaid, and all other advancements made or indebtedness incurred by said party obligee for said party obligor, under the terms of this bond, or the deed of trust aforesaid, shall be fully and promptly paid to said party obligee, prior to the commencement of any suit hereon, or proceedings for foreclosure of said deed of trust and sale of real estate therein described, then this obligation shall be void; otherwise shall remain in full force and effect.

Provided, however, that if at any time default shall be made in the payment of any instalment when due, as aforesaid, or in performance of any covenant made by the party of the first part thereto

in the said deed of trust, given to secure this bond, and such

5 default shall continue for the period of thirty days; then

this bond shall, at the option of the legal holder thereof, become and be at once due and payable, and the amount due shall be collectible by process of law, in proceedings to foreclose the said deed of trust, or by suit or suits at law upon this bond or otherwise.

It is further expressly provided, that if the statements and declarations made in the application for the loan for which this obligation is given, and on the faith of which said loan is made, or for life insurance to be held as collateral hereto, shall prove to be untrue, deceptive or fraudulent in any matter relating to the health or circumstances of the said Robert Rae Jr. which may affect the interests of said party obligee, its successors or assigns; or if the said Robert Rae Jr. shall, within the term aforesaid, without the written consent of said party obligee, its successors or assigns, or of such life insurance company as may have issued or may issue any policy of insurance upon his life, which may be held by said party obligee as collateral security for said loan, reside or travel elsewhere than in or to the United States, Canada or Europe, or travel to any locality in which cholera or yellow fever is prevailing as an epidemic, or be personally engaged in blasting, mining or submarine operations, or in the manufacture, handling or transportation of inflammable or explosive substances, or in service on any railway train, steamboat or sailing vessel, or in naval or army service in time of war or in case of the death of said Robert Rae Jr. by his own hand or act (within two years from the date hereof) or in consequence of a duel, or of the violation of the law, then, or in any of such cases, this bond shall not become void as hereinabove provided in case of the death of the party obligor, but shall remain in full force and effect, and, at the option of the legal holder thereof, become and be

at once due and payable, and the amount due hereon shall

6 be collectible by process of law, by foreclosure of said deed of trust, or otherwise; and in case this bond shall become

due in any manner above provided for, the amount due hereon shall be the sum of all instalments past due and unpaid, with interest as aforesaid, and such portion of the principal sum aforesaid

as shall still be unpaid, assuming that the portion of said principal sum to be paid during each periodical year of said term in equal monthly instalments, is as follows:

During the first year, two hundred ninety-eight $\frac{2}{100}$ dollars.....	\$298.02
During the second year, three hundred thirty $\frac{6}{100}$ dollars.....	330.16
During the third year, three hundred sixty-five $\frac{4}{100}$ dollars.....	365.54
During the fourth year, four hundred four $\frac{4}{100}$ dollars....	404.54
During the fifth year, four hundred forty-seven $\frac{2}{100}$ dollars.....	447.52
During the sixth year, four hundred ninety-four $\frac{9}{100}$ dollars.....	494.95
During the seventh year, five hundred forty-seven $\frac{8}{100}$ dollars.....	547.18
During the eighth year, six hundred four $\frac{6}{100}$ dollars....	604.66
During the ninth year, six hundred sixty-eight $\frac{7}{100}$ dollars...	668.07
During the tenth year, seven hundred thirty-nine $\frac{9}{100}$ dollars.....	739.36
Total.....	<u>\$4,900.00</u>

It is provided further that this bond may be discharged by payment, in gold as aforesaid, (said party obligor not being in default hereunder), on any instalment day, of all moneys due for advances on account of said party obligor, or of the property conveyed by said trust deed, in excess of said principal sum, and the portion of said principal sum then remaining unpaid to be computed as aforesaid, with a bonus of two and one-half per centum thereof.

ROBERT RAE, JR. [SEAL.]

7 Complainant states that the said Robert Rae, Jr., on the 1st day of August, 1895, was the owner in fee-simple of the following-described real estate situated in the city of Chicago, in the county of Cook and State of Illinois, to wit: Lot — (1), in block six (6), in Eggleston's subdivision of that part east of the Chicago, Rock Island & Pacific railroad, of the north one-half (N.  $\frac{1}{2}$ ) of the north half (N.  $\frac{1}{2}$ ) of the north half (N.  $\frac{1}{2}$ ) of the northeast quarter (N. E.  $\frac{1}{4}$ ) of section twenty-eight (28), township thirty-eight (38) north, range fourteen (14) east, of the third principal meridian; and in order to secure the payment of the said loan for forty-nine hundred dollars (\$4,900.00), in accordance with the terms and conditions of said bond, the said Robert Rae, Jr., and Elizabeth Rae, his wife, executed and delivered to Chicago Title and Trust Company, a corporation of the State of Illinois, a deed of trust bearing date the 1st day of August, 1895, whereby the said Robert Rae, Jr., and Elizabeth Rae, his wife, conveyed to the said Chicago Title & Trust Company the said premises on the terms and conditions in said trust deed specified; and complainant states that said trust deed was afterwards duly filed for record in the office of the recorder of Cook county aforesaid

on the 12th day of August, 1895, as document number 2,262,398, and was duly recorded in said office in Book 5255 of Record, on page 486; and complainant states that the said trust deed was and is in the words and figures following, to wit:

*Loan No. —.*

This indenture, made this first day of August in the year of our Lord one thousand eight hundred ninety-five, between Robert Rae, Jr., and Elizabeth Rae, his wife, party of the first part, and Chicago Title and Trust Company, all of the city of Chicago, county of Cook and State of Illinois, party of the second part, as trustee as hereinafter specified.

Witnesseth, that whereas, the said Robert Rae, Jr. is justly indebted to the Homestead Loan and Guaranty Company, in the principal sum of forty-nine hundred (\$4,900.00) dollars, secured to be paid by his bond, in the penal sum of ninety-eight hundred (\$9,800.00) dollars, bearing even date herewith, conditioned upon the payment to the said Homestead Loan and Guaranty Company, its agents, attorneys, successors, and assigns, in gold, of the said principal sum, with interest and charges, within ten years after date, in monthly instalments, as in said bond specified, in and by which said bond it is provided as follows:

"Provided, however, that if at any time default shall be made in the payment of any instalment when due, as aforesaid, or in the performance of any covenant made by the party of the first part thereto in the said deed of trust given to secure this bond, and such default shall continue for the period of thirty days; or if the statements and declarations made in the application for the loan for which this obligation is given and on the faith of which said loan is made, or for life insurance to be held as collateral hereto, shall prove to be untrue, deceptive or fraudulent in any matter relating to the health or circumstances of the said Robert Rae Jr. which may affect the interests of said obligee, its successors or assigns; or if said Robert Rae Jr. shall, within the term aforesaid, without the written consent of the said obligee, its successors or assigns, or of such life insurance company as may have issued, or may issue, any policy of insurance upon his life, which may be held by such obligee as collateral security for said loan, reside or travel elsewhere than in or to the United States, Canada, or Europe, or travel to any locality in which cholera or yellow fever is prevailing as an epidemic, or be personally engaged in blasting, mining or submarine operations, or in the manufacture handling or transportation of inflammable or explosive substances, or in service on any railway train, steamboat or sailing vessel, or in naval or army service in time of war; or in case of the death of said Robert Rae, Jr. by his own hand or act (within two years from the date hereof), or in consequence of a duel or of the violation of the law;

"Then this bond shall at the option of the legal holder thereof, become and be at once due and payable, and the amount due

hereon shall be collectible by process of law, by foreclosure of said deed of trust, or otherwise."

Now, therefore, the said party of the first part, for the better securing the payment of the said bond, according to the conditions thereof, and also in consideration of the sum of one dollar paid, the receipt whereof is hereby acknowledged, does by these presents convey and warrant unto the said party of the second part (and the successor in trust hereinafter appointed), the following-described real estate, situate, lying and being in the city of Chicago, county of Cook, and State of Illinois, to wit:

Lot one (1) in block six (6) in Eggleston's subdivision of that part east of the Chicago, Rock Island and Pacific railroad of the north half (N.  $\frac{1}{2}$ ) of the north half (N.  $\frac{1}{2}$ ) of the north half (N.  $\frac{1}{2}$ ) of the northeast quarter (N. E.  $\frac{1}{4}$ ) of section twenty-eight (28) township thirty-eight (38) north range fourteen (14) east of the third (3rd) principal meridian.

To have and to hold, the above granted, bargained and described premises, with the appurtenances and fixtures unto the said party of the second part, and the said successor in trust, forever, for the purposes, uses and trusts herein set forth, free from all rights and benefits under and by virtue of the homestead exemption laws of the State of Illinois, which rights and benefits are hereby  
10 expressly released and waived.

And the said party of the first part, for said party, and for the heirs, executors and administrators and assigns of said party, does covenant and agree with the said party of the second part and the said successor in trust, for the use of the holder or holders of said bond, until the indebtedness aforesaid shall be fully paid, not to suffer any part of said premises to be sold or forfeited for any tax or assessment whatsoever, nor suffer any mechanics' lien to attach to said premises, nor do nor permit to be done, upon said premises, anything that may impair the value thereof, or the security intended to be affected by virtue of this instrument. And in case of refusal or neglect of said party of the first part thus to pay taxes or assessments before the commencement of the annual tax sale of said county, or to keep the buildings on said premises in good repair, then said party of the second part, or the said successor in trust, or the holder or holders of said bond, or either of them, shall have the option to pay such taxes or assessments, or redeem such premises from any tax sale, or forfeiture, or purchase any certificate of tax sale or any tax title obtained on said premises, or settle any mechanics'-lien suits or claims, or make repairs; and all moneys paid for any such purpose, with interest thereon at the highest rate which it is now in such case lawful to contract for shall become so much additional indebtedness secured by this trust deed, and be paid out of the rents and proceeds of sale of the lands and premises aforesaid, if not otherwise paid by the said party of the first part; and it shall not be obligatory to inquire into the validity of such taxes or assessments, or of the sales therefor, or of such tax deeds, in advancing moneys in that behalf, as above author-

11      ized; but nothing herein contained shall be construed as requiring the said party of the second part, or the said successor in trust, or the legal holder or holders of said bond, to advance or expend money for taxes or assessments, or other purposes aforesaid. And as additional security for the indebtedness aforesaid, the said party of the first part, for the said party, and the heirs, executors, administrators and assigns of said party covenants and agrees to keep all buildings and fixtures that may be upon said premises, at any time during the continuance of said indebtedness, insured against loss or damage by fire for at least the principal sum due on said bond, or for their full insurable value, if less than such sum, in such responsible insurance company or companies as may be approved by the party of the second part, or the said successor in trust, or the holder or holders of said bond, and by the usual mortgage or trustee clause inserted in the policies of insurance to make all sums recoverable upon such policies payable to the party of the second part, or the said successor in trust, for the benefit of the holder or holders of said bond, and such policies shall be held by the said party of the second part, or the said successor in trust, or the holder or holders of said bond; and in case of neglect or refusal to insure as above provided, the party of the second part, or the said successor in trust, or the holder or holders of said bond, may procure such insurance; and all moneys paid therefor, with interest thereon at the highest rate which it is now in such case lawful to contract for, shall become so much additional indebtedness secured by this deed of trust; but it shall not be obligatory upon said party of the second part, or the said successor in trust, or the holder or holders of said bond to advance or pay for such insurance in case of such neglect or refusal.

12      And the insurance money recovered upon such policies shall be paid over to the legal holder or holders of said bond, on account of the indebtedness evidenced thereby, unless the party of the first part, or the heirs, executors, devisees or assigns of said party, shall, within ten days after such fire, request the holder or holders of said bond, or the trustees then acting hereunder, whether it be the trustee herein named or the successor in trust, in writing, to apply such money to the restoration of such buildings and fixtures, and shall also within ten days after such request, give security, satisfactory to the holder or holders of said bond or such trustee for the complete restoration of such buildings and fixtures, free from mechanics' liens, prior to the maturity of said bond, and a reasonable compensation to the holder or holders of said bond, or such trustee, and also for the payment of all instalments falling due upon such bond prior to the completion of said buildings and fixtures, as aforesaid; and upon such request and the furnishing of such security, the money recovered upon such policies shall be applied to the restoration of such buildings and fixtures. And the said party of the first part expressly covenants and agrees to repay, on demand, any moneys advanced under the foregoing provisions.

And it is further covenanted and agreed, that in case of default for a period of thirty days in making payment on any instalment

due, in accordance with the terms of said bond, or of a breach of any covenant or agreement herein contained, by the party of the first part, or the heirs, executors, administrators, successors or assigns of said party, or in such other case as may be in and by said bond provided, then the whole of said sum hereby secured shall, at once, at the option of the holder of said bond, become due and payable, without notice to the said party of the first part, or to the heirs, legal representatives, or assigns of said party. And there-

13 upon the legal holder or holders of the bond secured hereby, or the party of the second part, or the said successor in trust, for the benefit of the legal holder or holders of said bond, shall have the right to immediately foreclose this trust deed; and upon the filing of any bill for that purpose, the court in which such bill is filed, may at once, and without notice to the said party of the first part, or any person claiming under said party, appoint a receiver for the benefit of the legal holder or holders of the bond secured hereby, with power to collect the rents, issues and profits of said premises, during the pendency of such foreclosure suit, and until the time to redeem the same from any sale that may be made under any decree foreclosing this trust deed shall expire.

And in case of suit for foreclosure of this trust deed in any court of law or equity, a reasonable sum shall be allowed for the solicitors' fees and other expenses of the complainant in such proceeding, including the cost of obtaining a complete abstract of title to the said premises; and in case of any other suit, or legal proceeding, wherein the said party of the second part, or the said successor in trust, or the holder or holders of said bond, shall be, or be made a party by reason of this deed, the reasonable fees and charges of all persons so being or made parties, their attorneys and solicitors, for services in such suit or proceeding, shall be allowed and be a further lien and charge upon said premises, under this deed, and all such attorneys' and solicitors' fees and charges shall become so much additional indebtedness secured by this trust deed, and be paid out of the proceeds of sale thereunder, or from rents, as other costs, if not otherwise paid by said party of the first part.

And out of the proceeds of any sale under foreclosure of this trust deed, shall be paid: First—all the costs of such suit or suits, 14 proceedings, advertising and sale, attorneys', solicitors', and trustees' fees. Second—all the moneys advanced by the party of the second part, or successor in trust, or the holder or holders of said bond, for taxes, assessments, forfeitures, tax certificates, redemptions or tax deeds, repairs, mechanics' liens, fire or life insurance, continuations or examination of abstracts, or for any other purpose authorized in this trust deed, or incident to the making of the loan hereby secured, with interest on such advances at the highest rate which it is now in such case lawful to contract for. Third—all the accrued interest remaining unpaid on said bond. Fourth—all of said principal money remaining unpaid; and the overplus of the purchase-money, if any there be, shall then be paid to the said party of the first part, or to the heirs, legal representatives, or assigns of said party, on reasonable request.



And it shall not be obligatory upon the purchaser or purchasers at such sale to see to the application of the purchase-money.

A reconveyance of said premises shall be made by the party of the second part, or the said successor in trust, to said party of the first part, or to the heirs or assigns of said party, on full payment of the indebtedness aforesaid and the performance of the covenants and agreements made herein by the party of the first part, or upon the discharge of said bond by death of the obligor therein, as in said bond provided, and the payment of the reasonable fees of the said party of the second part, or the said successor in trust.

In the case of the refusal or inability of the said party of the second part, then the The Northern Trust Company of the City of Chicago, in the said county of Cook, shall be and is hereby appointed and made successor in trust to said party of the second part, under this deed, and for the purposes and uses herein expressed, with the same power and authority as said trustee.

Witness the hand and seal of the said party of the first part, the day and year above written.

ROBERT RAE, JR. [SEAL.]  
ELIZABETH RAE. [SEAL.]

STATE OF ILLINOIS, }  
County of Cook, } ss:

I, Francis A. Demmler, a notary public in and for said county, in the State aforesaid, do hereby certify that Robert Rae, Jr., and Elizabeth Rae, his wife, personally known to me to be the same person- whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed, and delivered the said instrument as their free and voluntary act for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this twelfth day of August, A. D. 1895.

[SEAL.]

FRANCIS A. DEMMLER,  
Notary Public.

16 Complainant states that it is still the legal holder and owner of the said bond; that the said Robert Rae, Jr., has made default in the payment of the installment of said loan which by the terms of the said bond became due on the 1st day of February, 1896, amounting to the sum of sixty-five and  $\frac{5}{100}$  dollars (\$65.56), and complainant states that the said Robert Rae, Jr., has made default in the payment of each of the installments of the said loan which became due on the 1st day of each and every month from February, 1896, to and including the 1st day of October, 1896, each of said installments amounting to the sum of sixty-five and  $\frac{5}{100}$  dollars (\$65.56).

Complainant states that the said Robert Rae, Jr., has also made default in the payment of the interest upon the said several installments from the dates when they respectively became due, and in accordance with the terms and conditions of the said bond.

Complainant states that by reason of the default in the payment of the said several installments due upon said loan, as aforesaid, it has elected to declare the entire amount of the said loan due and payable, as by the terms of the said bond and trust deed it has the right to do, said defaults having continued for more than the period of thirty (30) days in said bond specified.

Complainant states that there is now due upon the said loan, in gold coin of the United States of the present standard of weight and fineness, the sum of five hundred ninety and  $\frac{4}{100}$  dollars (\$590.04), being the aggregate of the said several installments of said loan due and payable, as aforesaid, and interest on the several installments, at the rate of seven per cent. (7 %) per annum, from the dates when they respectively became due.

Complainant states that there is also due upon said loan the said principal sum of forty-nine hundred dollars (\$4,900.00),  
 17 less the sum of three hundred eighty and  $\frac{56}{100}$  dollars (\$380.56),  
 amounting to forty-five hundred nineteen and  $\frac{44}{100}$  dollars (\$4,519.44), being the proportion of the said principal sum now due in accordance with the terms and provisions of the said bond.

Complainant states that five per cent. (5 %) upon the amount due upon said loan is a reasonable sum to be allowed to complainant for its solicitors' fees in this proceeding, as provided by the terms of the said trust deed.

And complainant states that there should also be included in any decree which may be entered in this cause the cost of obtaining a complete abstract of title to the said premises, and also the amounts which complainant may be obliged to pay during the pendency of this suit for insurance or taxes or other charges upon the said premises, with interest thereon, at the rate of seven per cent. (7 %) per annum, from the dates of any such payments.

Complainant states that the said Robert Rae, Jr., and Elizabeth Rae, his wife, claim some interest in the premises above described as owners of the equity of redemption therein or otherwise, and complainant states that the rights and interests of the said parties in and to said premises, if any they have, are subordinate and subject to the lien of the said trust deed thereon and are subordinate and subject to the rights and interests of complainant under the said trust deed.

Complainant being, therefore, without remedy save in a court of equity, makes defendants to this bill the said Robert Rae, Jr., Elizabeth Rae, his wife, and Chicago Title & Trust Company, as trustee, and prays that they may be summoned in the manner provided by law and required to answer this bill, but not under oath, the answer under oath being hereby waived.

Complainant prays that upon the hearing hereof the court  
 18 will ascertain upon an accounting how much is due to the complainant under the terms of the said bond and trust deed, and will decree the payment of any amounts so found due, by a short day, in gold coin of the United States of the present standard weight and fineness.

Complainant further prays that if default shall be made in the



payment of said amounts, then the premises above described or so much thereof as may be necessary to pay the said amounts may be sold at public sale pursuant to the rules and practices of this court.

Complainant prays that the proceeds of said sale may be applied as provided by the terms of said trust deed, first, to the costs of this suit, costs of said sale, and complainant's solicitors' fees; second, to the payment of all sums advanced by complainant under the terms of said trust deed for insurance, taxes, abstracts of title, or otherwise, with interest thereon, at the rate of seven per cent. (7 %) per annum, from the dates of said payments respectively; third, to the payment of all accrued interest remaining unpaid on said bond; and

Fourth. To the payment of all of the principal sum due under said bond remaining unpaid.

Complainant further prays that if the premises sold shall not be redeemed from said sale within the time and in the manner provided by law, then the said defendants and all parties claiming by, through, or under them since the commencement of this suit shall be forever barred and foreclosed of and from any and all right, title, and interest in and to the premises sold and every part thereof; that the purchaser at said sale may thereupon receive a deed for the premises sold and may be let into possession thereof and may

19 have the assistance of this court to recover such possession as against the defendants and all parties claiming under them.

Complainant prays for such other, further, or different relief as the circumstances of the case may require and to the court shall seem meet; and complainant will ever pray, etc.

HOMESTEAD LOAN & GUARANTY CO.,  
By WILSON, MOORE & McILVANE,  
*Its Solicitors.*

20 STATE OF ILLINOIS, }  
County of Cook, } ss:

The People of the State of Illinois to the sheriff of said county,  
Greeting:

We command you that you summon Robert Rae, Jr.; Elizabeth Rae, his wife, and Chicago Title & Trust Company, as trustee, if they shall be found in your county, personally to be and appear before the circuit court of Cook county on the first day of the term thereof, to be holden at the court-house, in Chicago, in said Cook county, on the third Monday of November, A. D. 1896, to answer unto Homestead Loan & Guaranty Company, a corporation, in its certain bill of complaint filed in said court on the chancery side thereof.

And have you then and there this writ, with an endorsement thereon in what manner you shall have executed the same.

Witness Frank J. Gaultier, clerk of said court, and the seal

thereof, at Chicago, in said county, this 16th day of October, A. D. 1896.

[SEAL.]

FRANK J. GAULTER, *Clerk.*

(Endorsed on back as follows :)

P'd 2.85. M., 1.15.—Served this writ on the within-named defendant, Robert Rae, Jr., by leaving a copy thereof for him at his usual place of abode with Mrs. H. Wolf, a member of his family, a person of the age of ten years and upwards, at the same time informing her of the contents thereof, this 21st day of October, 1896; also served this writ on the within-named defendant, Elizabeth Rae, by delivering a copy thereof to her this 21st day of October, 1896; also served  
21 this writ on the within-named Chicago Title and Trust Company, as trustee, a corporation, by delivering a copy thereof to H. W. Teman, 2nd vice-president of said corporation, this 22nd day of October, 1896, the president, secretary, or treasurer of said corporation not found in my county. James Pease, sheriff. Alfred Anderson, deputy.

And afterwards, to wit, on the 18th day of November, A. D. 1896, a certain appearance was filed in the office of the clerk of said court in words and figures following, to wit :

STATE OF ILLINOIS, }  
County of Cook, } ss :

In the Circuit Court of Cook County.

HOMESTEAD LOAN & GUARANTY COMPANY }  
vs. } Gen. No., 162,796.  
ROBERT RAE, JR., ET AL. } In Chancery.

I hereby enter the appearance of Robert Rae, Jr., and Elizabeth Rae, his wife, defendants, and that of myself as their solicitor, in above-entitled cause.

ROBERT RAE.

22 And afterwards, to wit, on the 6th day of February, A. D. 1897, the following proceedings were had and entered of record in said court, to wit :

*Order of February 6, 1897.*

HOMESTEAD LOAN AND GUARANTY COMPANY }  
vs. } 162,796. Bill.  
ROBERT RAE ET AL. }

On motion of solicitor, it is ordered that the plea entered in this cause by the defendants be, and the same is hereby, overruled.

And it is further ordered that the defendants be, and they are hereby, ruled to answer within five days from date.

And afterwards, to wit, on the 11th day of February, A. D. 1897, a certain demurrer was filed in the office of the clerk of said court in words and figures following, to wit:

STATE OF ILLINOIS, }  
County of Cook, } ss:

In the Circuit Court of Cook County.

ROBERT RAE, JR., ET AL.  
ats.

HOMESTEAD LOAN AND GUARANTEE CO. } Gen. No., 162,796; T. No.,  
5280. In Chancery.

23 The demurrer of Robert Rae, Jr., and Elizabeth, his wife, to the bill of complaint of Homestead Loan and Guarantee Company, complainant.

These defendants, by protestation, not confessing or acknowledging all or any of the matters and things in the said bill of complaint contained to be true in such manner and form as the same are therein and thereby set forth and alleged, demur to said bill, and for cause of demur show that:

(1.) The matters and things set out in the complainant's bill are contrary to public policy and void.

(2.) Because it is not lawful for the complainants and the defendants to make any money but gold and silver money a money tender in payment of any debt contracted in the United States to be paid in the United States.

(3.) That so much of the act of Congress of February 28, 1878, entitled "An act to authorize the coinage of the standard silver dollar, and to restore its legal-tender character," which provides that gold and silver money of the United States shall be a legal tender for payment and discharge of debts and obligations is valid, but the proviso permitting parties to make such special contracts as they please as to the payment of debts and obligations in money other than gold and silver is void.

(4.) That the contract or mortgage set forth in said bill and the relief prayed therein is void, as against public policy.

(5.) That by virtue of article 1, section 8, paragraph 5, of the Constitution of the United States, Congress alone has "power to coin money and regulate the value thereof," and that by article 1, section 10, paragraph 1, of said Constitution it is provided

24 that "no State shall coin money, emit bills of credit, or make anything but gold and silver coin a tender" in payment of debts, in contracts made in the United States to be performed in the United States. Said defendants claim, jointly and severally, the benefit of said constitutional provisions.

(6.) That said bill should be dismissed for want of equity. Wherefore, and for divers other good causes of demurrer appearing in said bill of complaint, these defendants demur to the said bill and to all the matters and things therein contained, and prays the judgment of this honorable court whether they shall be compelled to make

any further or other answer to the said bill, and they pray to be dismissed with their reasonable costs in this behalf sustained.

By ROBERT RAE,  
ALFRED MOORE,  
*Solicitors for Defendant.*

And afterwards, to wit, on the 13th and 15th, A. D. 1897, days of February, the following proceedings were had and entered of record in said court, to wit:

*Order of Feb. 13, 1897.*

HOMESTEAD LOAN AND GUARANTEE COMPANY	} 162,796. Bill.
VS.	
ROBERT RAE ET AL.	

This day come the parties hereto, by their respective solicitors, and thereupon come on to be heard the demurrer of the defendants to the bill, which was argued by counsel; and the court, being fully advised in the premises, doth overrule said demurrer; to which the defendants, by their solicitor, except, and therefore the court  
25 doth rule the defendants to answer instantler, and which said defendants refuse and elect to stand on their demurrer.

HOMESTEAD LOAN AND GUARANTY COMPANY	} 162,796. Bill.
VS.	
ROBERT RAE, JR., ELIZABETH RAE, His Wife, and Chicago Title & Trust Company, "as Trustee."	

*Order of Feb. 15, 1897.*

Now comes the complainant, by its solicitors; also come the defendants Robert Rae, Jr., and Elizabeth Rae, his wife, by their solicitor, and this cause coming on to be heard upon the complainant's bill of complaint, and it appearing to the court that the defendant Chicago Title & Trust Company, as trustee, has been duly defaulted, and that defendants Robert Rae, Jr., and Elizabeth Rae have elected to abide by their demurrer heretofore filed by them to the complainant's bill and have refused to answer said bill, it is ordered that said bill be taken as confessed by said Robert Rae, Jr., and Elizabeth Rae, and the court finds that it has jurisdiction of the parties to this cause and of the subject-matter thereof, and said cause now coming on to be heard upon the complainant's bill taken as confessed by the defendants and upon the evidence submitted in open court by the complainant, the court, being fully advised in the premises, finds from the evidence that the allegations of the complainant's bill are true, and that the equities of this cause are with the complainant. The court finds that on or about the 1st day of August, 1895, the defendant Robert Rae, Jr., being indebted to the complainant in the sum of  
26 (\$4,900.00) for a loan made by the complainant to said defendant, executed and delivered to the complainant his

bond, bearing date the 1st day of August, 1895, which bond is correctly set out at length in the complainant's bill; that to secure the said bond the said Robert Rae, Jr., being the owner in fee-simple of the lands hereinafter described, executed and delivered to the defendant Chicago Title and Trust Company a deed of trust bearing date August 1st, 1895, for the purpose of securing said bond and the moneys due thereon, and said trust deed was afterwards duly filed for record in the office of the recorder of Cook county on the 12th day of August, 1895, as document No. 2,262,398, and was duly recorded in Book 5255 of Records, at page 486, and said trust deed conveyed the following-described real estate situated in the county of Cook and State of Illinois, to wit: Lot one (1), in block six (6), in Eggleston's subdivision of that part east of the Chicago, Rock Island & Pacific railroad, of the north half of the north half of the north half of the northeast quarter of section twenty-eight (28), township thirty-eight (38) north, range fourteen (14) east of the third principal meridian, and the court finds that said trust deed is correctly set out at length in the complainant's bill.

The court further finds that said trust deed is a valid and first lien upon the premises therein described.

The court further finds that the said Robert Rae, Jr., has made default in the payment of the instalment due under the terms of said bond on the first day of February, 1896, and default has been made by the said Robert Rae in the payment of each instalment which has become due under the terms of said bond since the 1st day of February, 1896; that by reason of said default the complainant has elected to declare the entire amount secured by said bond due and payable, said default having continued for more than thirty days.

The court further finds that there is now due from the said Robert Rae to the complainant for principal and accrued interest, according to the terms and conditions of said bond, the sum of \$5,350.76.

The court further finds that the complainant has paid for an abstract of title the sum of \$7.00, which under the terms of said trust deed should be included in this decree.

The court further finds that the sum of \$245.00 is a reasonable sum to be allowed to complainant for its solicitors' fees in this proceeding, in accordance with the terms of the said trust deed.

The court further finds that the rights and interests of the defendants Robert Rae, Jr., and Elizabeth Rae, his wife, in and to the said premises are subject to the lien of said trust deed.

It is therefore ordered, adjudged, and decreed by the court that unless the said defendant, Robert Rae, Jr., or some one on his behalf, shall pay to the complainant within five days from the entry of this decree the sum of \$5,357.76, with interest thereon, at the rate of 5% per annum, from the entry of this decree, also the costs of this suit and the sum of \$245.00 for complainant's solicitors' fees, then the premises above described, or so much thereof as may be necessary to satisfy this decree, shall be sold at public sale to the

highest and best bidder, for cash, by Thomas Taylor, Jr., one of the masters in chancery of this court; and it is ordered that said sale shall be made at the judicial sales-room of the Chicago real estate board, No. 57 Dearborn street, Chicago, and the said master shall give public notice of the time, place, and terms of said sale by publishing the same once in each week for  
 28 three successive weeks in some newspaper of general circulation in the city of Chicago aforesaid published in the English language, the first publication to be at least twenty-one days prior to the date of sale, and at said sale any party to this cause may become a purchaser of said premises, and out of the proceeds of said sale said master shall pay first the costs of this suit, including the cost of advertising and sale and the said complainant's solicitors' fees. He shall then pay the sum of \$7.00, advanced by the complainant for an abstract of title. He shall then pay all the accrued interest remaining unpaid on said bond, including interest on the amount found due by this decree up to the date of sale. He shall then pay the principal sum remaining unpaid upon said bond. He shall pay the overplus of the purchase-money, if any, into court, to abide the further order of this court, and shall deliver to the purchaser at said sale a certificate in conformity with the statute in such case made and provided.

It is further ordered, adjudged, and decreed that unless the premises sold shall be redeemed from said sale within the time and in the manner provided by law, then the defendant and all parties claiming by, through, or under them or any of them since the commencement of this suit shall stand forever barred and foreclosed from any and all right, title, and interest in and to the said premises or any part thereof, and thereupon the purchaser at said sale, his heirs or assigns, shall receive a master's deed for said premises and shall recover possession thereof; and it is hereby ordered, adjudged, and decreed that the defendants and all parties claiming under them, upon the exhibition to them of said master's deed, together with a certified copy of this decree and a  
 29 copy of the order of this court confirming the said master's sale, shall surrender and deliver up to the grantee in said deed, or his heirs or assigns, the premises sold and described in said deed, and the grantee in said deed, his heirs and assigns, shall thereupon be entitled to the assistance of this court to recover possession of the said premises.

And thereupon the said defendant, Robert Rae, Jr., and Elizabeth Rae, prays an appeal to the appellate court in and for the first district of Illinois, which is granted upon condition that said defendants file herein a good and sufficient bond in the penal sum of \$300.00, with sureties to be approved by the clerk of this court.

And thirty days from date is allowed in which to file bond and certificate of evidence herein.

Be it remembered that heretofore, to wit, on the 11th day of March, A. D. 1897, a certain appeal bond was filed in the office of the clerk of said court in words and figures following, to wit:

30 Know all men by these presents that we, Robert Rae, Jr., and Elizabeth Rae, as principals, and James R. Thacker, of the county of Cook and State of Illinois, are held and firmly bound unto Homestead Loan and Guaranty Company, a corporation, also of the same county and State, in the penal sum of three hundred (\$300.00) dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this eighth day of March, A. D. 1897.

The condition of the above obligation is such that whereas the said Homestead Loan and Guaranty Company did on the fifteenth day of February, A. D. 1897, in the circuit court of Cook county, in the State aforesaid, and of the February term thereof, A. D. 1897, recover a judgment against the above-bounden Robert Rae, Jr., and Elizabeth Rae for the sum of five thousand six hundred and two dollars and seventy-six cents, besides costs of suit, from which said judgment of the said circuit court of Cook county the said Robert Rae, Jr., and Elizabeth Rae have prayed for and obtained an appeal to the appellate court within and for the first district in said State:

Now, therefore, if the said Robert Rae, Jr., and Elizabeth Rae shall duly prosecute their said appeal with effect and moreover pay the amount of the judgment, costs, interest, and damages rendered and to be rendered against them in case the said judgment shall be affirmed in said appellate court, then the above obligation to

31 be void; otherwise to remain in full force and virtue.

ROBERT RAE, JR.	[SEAL.]
ELIZABETH RAE.	[SEAL.]
JAMES B. THACKER.	[SEAL.]

Approved:

JOHN GIBBONS, *Judge.*

(Signed)

JOHN A. COOKE, *Clerk.*

32 STATE OF ILLINOIS, }  
Cook County, } ss:

I, John A. Cooke, clerk of the circuit court of Cook county and keeper of the records and files thereof, in the State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete transcript of the record in a certain cause, lately pending in said court, on the chancery side thereof, between Homestead Loan & Guaranty Company, complainant, and Robert Rae, Jr., *et al.*, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Chicago, in said county, this 20th day of September, 1897.

[SEAL.]

JOHN A. COOKE, *Clerk.*



33 In the Appellate Court of the State of Illinois, First District,  
to the October Term, 1897.

ROBERT RAE, JR., ET AL., Appellants,	}	Error to the Circuit Court of Cook County.
vs.		
THE HOMESTEAD LOAN AND GUAR- antee Company, Appellee.	}	

And now comes the appellants, by Robert Rae, their attorney, and say that in the record and proceedings and in rendering decree aforesaid there is manifest error, in this, to wit:

(1.) The court below erred in overruling defendants' demurrer filed in the said court on the 11th day of February, 1897, to said complainant's bill and entering a decree *pro confesso* on the allegations of the bill.

(2.) The court erred in not sustaining said demurrer and dismissing said bill.

(3.) The court erred in not dismissing said bill for the several reasons set up in said demurrer.

(4.) The court erred in not dismissing said bill because said bill claimed that there was due said complainant the sum found to be due complainant by the terms of the mortgage and bond in gold coin of the United States of the present standard of weight and fineness.

(5.) The court erred in decreeing the whole sum, principal and interest, due at the election of the complainant because the defendants had not paid the interest in gold coin of the United States of the present standard of weight and fineness.

(6.) The court erred in sustaining the complainant's bill because said bill averred that the defendants became indebted to the complainant in the sum of four thousand nine hundred dollars (\$4,900.00) in gold coin of the United States of America of the then standard weight and fineness without alleging that said defendants received such gold coin of the complainant.

(7.) The court erred in sustaining complainant's bill on the allegation that there is now due upon said loan, in gold coin of the United States of the present standard of weight and fineness, the sum of five hundred ninety dollars and four cents (\$590.04), being the aggregate of the said several installments of said loan due and payable as aforesaid; also, there is due on said loan four thousand five hundred nineteen dollars and forty-four cents (\$4,519.44), in accordance with the terms of said mortgage.

By reason whereof the appellant prays that said judgment be reversed, etc

By ROBERT RAE,  
Attorney for Appellant.



In the Appellate Court, First District, Illinois.

ROBERT RAE, JR., ET AL., Appellants,	} No. 7355. Appeal, Cook Circuit.
vs.	
HOMESTEAD LOAN AND GUARANTY CO., Appellee.	

I, Thomas N. Jamieson, clerk of the appellate court within and for the first district of Illinois, hereby certify that the transcript of record hereto attached and marked "A" is the original transcript of record filed in said appellate court on the 5 day of October, A. D. 1897, by said appellant.

In testimony whereof I have hereunto set my hand and seal of said court, at Chicago, this 20 day of June, A. D. 1898.

THOMAS N. JAMIESON,  
*Clerk of the Appellate Court, First District, Illinois.*

At a term of the appellate court begun and held at Chicago, on Tuesday, the first day of March, in the year of our Lord one thousand eight hundred and ninety-eight, within and for the first district of the State of Illinois.

Present: Hon. Henry M. Shepard, presiding justice.

" " Henry V. Freeman, justice.

" " Oliver H. Horton, justice.

Thomas N. Jamieson, clerk; James Pease, sheriff.

ROBERT RAE, JR., ET AL., Appellants,	} No. 7355. Appeal to Cook Circuit.
vs.	
HOMESTEAD LOAN AND GUARANTY COMPANY, Appellee.	

Be it remembered that on the 8 day of November, A. D. 1897, it being one of the days of the October term, A. D. 1897, certain proceedings were had in said court and entered of record in words and figures following, to wit:

ROBERT RAE, JR., ET AL.	} 7355. Appeal, Circuit.
vs.	
HOMESTEAD LOAN AND GUARANTEE COM- pany.	

This day came appellant, by their counsel, and moved the court for leave to make corrections in their briefs filed herein; and the court, being fully advised in the premises, doth order that said motion be, and the same is hereby, allowed.

And afterwards, on the 29th day of March, A. D. 1898, the following proceedings were had and entered of record in said cause, to wit:

ROBERT RAE, JR., ET AL.	}	7355. Appeal, Circuit.
<i>vs.</i>		
HOMESTEAD LOAN AND GUARANTEE COM- pany.		

This cause having this day been reached in the call of the docket and no one appearing to argue the same, and the court, not being fully advised in the premises, doth order that said cause be taken under advisement.

And afterwards, on the 31st day of May, A. D. 1898, the following proceedings were had and entered of record in said cause, to wit:

ROBERT RAE, JR., and ELIZABETH RAE,	}	No. 7355. Appeal from Cook Circuit.
Appellants,		
<i>vs.</i>		
HOMESTEAD LOAN AND GUARANTY COM- pany, Appellee.		

On this day came again the said parties, and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record

and proceedings aforesaid nor in the rendition of the decree  
38 aforesaid is there anything erroneous, vicious, or defective,  
and that in that record there is no error: therefore it is considered by the court that the decree aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant its costs by it in this behalf expended, to be taxed, and that it have execution therefor.

And afterwards, on the 20th day of June, A. D. 1898, the following proceedings were had and entered of record in said cause, to wit:

ROBERT RAE, JR., ET AL.	}	7355. Appeal, Circuit.
<i>vs.</i>		
HOMESTEAD LOAN AND GUARANTEE COM- pany.		

This day came appellants, by their counsel, and moved the court for an appeal from the order and judgment of this court in said cause to the supreme court of Illinois; and the court, being fully advised in the premises, doth order that an appeal be allowed herein to the said supreme court on condition that appellants do within twenty days from this date execute and file in said cause a good and sufficient appeal bond, conditioned according to law, in the penal sum of one thousand dollars, with surety thereto to be approved by the court. Whereupon counsel for appellants now here presented their certain appeal bond in said cause in the sum of one thousand dollars, with James R. Thacker and Robert Rae as

39 sureties thereto; and the court, being fully satisfied as to the qualification of said sureties, doth order that said appeal bond be, and the same is hereby, taken, approved and filed herein.

And afterwards, on the same day, to wit, the 20th day of June, A. D. 1898, the following proceedings were had and entered of record in said cause, to wit:

Know all men by these presents that we, Robert Rae, Jr., and Anna Elizabeth Rae, as principal, and James R. Thacker and Robert Rae, as sureties, of the county of Cook and State of Illinois, are held and firmly bound unto Homestead Loan and Guarantee Company, also of the same county and State, in the penal sum of one thousand dollars, lawful money of the United States; for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly, severally, and firmly, by these presents.

Witness our hands and seals this 20th day of June, A. D. 1898.

The condition of the above obligation is such that whereas the said Homestead Loan and Guarantee Company did on the 15th day of February, A. D. 1897, in the circuit court of Cook county, in the State aforesaid, and of February term thereof, A. D. 1897, recover a judgment against the said Robert Rae, Jr., and Anna Elizabeth Rae, his wife, for the sum of six thousand one hundred and two dollars and seventy-six cents, besides costs of suit, from which said judgment of the circuit court of Cook county the said Robert Rae, Jr., and Anna Elizabeth Rae, his wife, prayed for and obtained an appeal to the appellate court within and for the first district of said State; and whereas the said appellate court did on the 31st day of May, A. D. 1898, and at the March term thereof, A. D. 1898, affirm the judgment of the circuit court aforesaid, and did render judgment against the above-bounden Robert Rae, Jr., and Anna

40 Elizabeth Rae, his wife, for costs of suit, from which order of affirmance and judgment of the said appellate court the said ——— have prayed for and obtained an appeal to the supreme court of the State of Illinois:

Now, therefore, if the said Robert Rae, Jr., and Anna Elizabeth Rae, his wife, shall duly prosecute their said appeal with effect and, moreover, pay the amount of the judgment, costs, interests, and damages rendered and to be rendered against them in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void; otherwise to remain in full force and virtue.

ROBERT RAE, JR.

ANNA ELIZABETH RAE.

JAMES R. THACKER.

ROBERT RAE.

[SEAL.]  
[SEAL.]  
[SEAL.]  
[SEAL.]

Approved:

HENRY V. FREEMAN, *Justice*.

O K:

WILSON, MOORE & McILVAINE.

(Endorsed on back as follows:)

Mrs. Rae, lot 2, Cribb's sub., N. Cedar lake, Lake Co.; S. W. N. W. 32, 46, 10; lot 4, block 1, Peter Phimp's sub., N. W. of R. R. P., E. 1, S. E. 1, sec. 9, T. 38, R. 14, worth \$20,000. Robert Rae worth \$200,000 over all debts. Rob't Rae.

I, Thomas N. Jamieson, clerk of the appellate court in and for the first district of the State of Illinois, do hereby certify that the foregoing is a true copy of the final order and judgment and all other proceedings and appeal bond of the said appellate court in the above-entitled cause of record in my office.

In testimony whereof I have set my hand and affixed the  
41 seal of said appellate court, at Chicago, this 20 day of June,  
in the year of our Lord one thousand eight hundred and  
ninety-eight.

THOMAS N. JAMIESON,

[SEAL.]

*Clerk of the Appellate Court of the First District.*

42 In the Supreme Court of the State of Illinois, Northern  
Division, October Term, '98.

ROBERT RAE, JR., ET AL., Appellants,	}	Error to the Appel- late Court.
vs.		
THE HOMESTEAD LOAN AND GUARANTEE Company, Appellee.		

And now come the appellants, by Robert Rae, their attorney, and says that in the record and proceedings and in rendering decree aforesaid there is manifest error in this, to wit:

(1.) The appellate court of the State of Illinois below *ended* in offering the decree of the trial court in overruling appellants' demurrer filed in the said court on the 11th day of February, 1897, to said appellee's bill and entering a decree *pro confesso* on the allegations of the bill.

(2.) The appellate court *ended* in not reversing the trial court in sustaining said demurrer and dismissing said bill.

(3.) The appellate court *ended* in not dismissing said bill for the several reasons set up in the assignment of errors filed in said court.

(4.) The court erred in not dismissing said bill, because said bill claimed that there was due said appellee the sum found to be due appellee by the terms of the mortgage and bond in gold coin of the United States of the present standard of weight and fineness.

(5.) The court *ended* in decreeing the whole sum, principal  
43 and interest, due at the election of the appellee, because the  
appellants had not paid the interest in gold coin of the  
United States of the present standard of weight and fineness.

(6.) The court *ended* in sustaining the appellee's bill, because said bill averred that the appellants became indebted to the appellee in the sum of four thousand nine hundred dollars (\$4,900.00) in gold coin of the United States of America of the then standard weight

and fineness, without alleging that said appellants received such gold coin of the appellee.

(7.) The court *ended* in sustaining appellee's bill on the allegation that there is now due upon said loan, in gold coin of the United States of the present standard of weight and fineness, the sum of five hundred and ninety dollars and four cents (\$590.04), being the aggregate of the said several installments of said loan due and payable, as aforesaid; also there is due on said loan four thousand five hundred and nineteen dollars and forty-four cents (\$4,519.44) in accordance with the terms of said mortgage.

By reason whereof the appellant prays that said judgment of affirmation be reversed, etc.

By ROBERT RAE,  
*Attorney for Appellant.*

And afterwards, to wit, on the 19th day of October, A. D. 1898, the same being one of the regular days of said term of court, certain proceedings were had in said court and entered of record in the words and figures following, viz:

44	ROBERT RAE, JR., <i>vs.</i>	} No. 489. Appeal from Appel- late Court of Illinois, First District.
	HOMESTEAD LOAN AND GUARANTY COMPANY.	

Now, on this day, come the parties hereto, and this being one of the days set apart for the call of the docket under the rules of this court, and it appearing to the court that — —, appellant, hath filed herein a duly certified transcript of the record and proceedings of the court below, together with printed abstracts thereof, and briefs and arguments of counsel in support of the errors assigned herein, and entered motion to reverse the judgment and remand said cause and for costs, and the said appellee, — —, having entered motion to affirm said judgment and for costs and *procedendo*, and said motions being taken under advisement for final hearing, and the clerk of this court reporting that said cause is now ready to be taken, and said cause is here submitted for the consideration and judgment of the court:

Therefore it is ordered by the court that this cause be, and the same is hereby, taken under advisement.

45 At a supreme court begun and held at Springfield on Tuesday, the — day of —, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jesse J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk.*

Be it remembered, to wit, on the twenty-second day of February, A. D. 1899, the same being in vacation after the term of court aforesaid, the following proceedings were by said court had and entered of record, to wit:

ROBERT RAE, JR.,	}	No. 489. Appeal from Appellate Court of Illinois, First District.
v.		
HOMESTEAD LOAN AND GUARANTY Company.		

And now, on this day, this cause having been argued by counsel and the court having diligently examined and inspected as well the record and proceedings aforesaid as the matters and things therein assigned for error, and being now sufficiently advised of and concerning the premises, for that it appears to the court now here that neither in the record and proceedings aforesaid nor in the rendition of the judgment aforesaid is there anything erroneous, vicious, or defective, and that in that record there is no error: therefore it is considered by the court that the judgment aforesaid be affirmed in all things and stand in full force and effect, notwithstanding the said matters and things therein assigned for error; and it is further considered by the court that the said appellee recover of and from the said appellant its costs by it in this behalf expended, and that it have execution therefor.

46 At a supreme court begun and held at Springfield, on Tuesday, the 7th day of February, in the year of our Lord one thousand eight hundred and ninety-nine, within and for the State of Illinois.

Present: Joseph N. Carter, chief justice; Alfred M. Craig, justice; Jacob W. Wilkin, justice; James H. Cartwright, justice; Benjamin D. Magruder, justice; Jessie J. Phillips, justice; Carroll C. Boggs, justice; Edward C. Akin, attorney general; Charles M. Woods, sheriff.

Attest:

CHRISTOPHER MAMER, *Clerk*.

Be it remembered that afterwards, to wit, on the twenty-second day of February, 1899, the opinion of the court was filed in the words and figures following, to wit:

ROBERT RAE, JR.,	}	No. 489. Error to —. Appeal from First District.
vs.		
HOMESTEAD LOAN AND GUARANTY COMPANY.		

47 Docket No. 489.—Agenda 86.—Northern Div.—Oct., '98.

ROBERT RAE, JR., ET AL.	}
v.	
HOMESTEAD LOAN & GUARANTY Co.	

Appellee filed a bill to foreclose a certain mortgage upon certain property therein described, in which it was recited that the defendants became indebted to the complainant in the sum of \$4,900,

which was to be paid in ten years from the date of the mortgage in gold coin of the United States of the then standard weight and fineness. The bill alleges that the defendants made default in payment of one or more of the installments due upon the loan, in consequence of which the complainant elected to declare the amount of the loan and coupon notes due and payable, as authorized by the terms of the trust deed. It is alleged that there is now due and unpaid the aggregate of the several installments past due and of the unpaid principal, and prays for a decree for the payment of the amount that may be found due, and that the same may be paid in gold coin, etc.

A general and special demurrer was interposed to this bill, setting forth the special causes, as follows:

First. The matters and things set out in complainant's bill are, under the act of July 14, 1890, and the act of November, 1893, contrary to public policy and void.

Second. Because it is not lawful for the complainant and the defendants to make any metallic money but gold and silver a money tender in the payment of any debt contracted in the United States to be paid in the United States.

Third. That so much of the act of Congress of February 28, 1878, entitled "An act to authorize the coinage of the standard silver dollar and to restore its legal-tender character," which provides that gold and silver money of the United States shall be legal tender for payment and discharge of debts and obligations is valid, but the proviso permitting parties to make such special contracts as they please as to the payment of debts and obligations, if in money, if made payable in gold only, is void.

Fourth. That the contract or mortgage set forth in the said bill, and the relief prayed therein are void, as against public policy.

Fifth. That by virtue of article 1, section 8, paragraph 5, of the Constitution of the United States, Congress alone "has power  
48 to coin money and regulate the value thereof," and by article 1, section 10, paragraph 1, of said Constitution, it is provided that "no State shall coin money, emit bills of credit or make anything but gold and silver coin a legal tender" in the payment of debts in contracts made in the United States to be performed in the United States, and that the contract set up is void as against public policy. Said defendants claimed jointly and severally the benefit of said constitutional provisions.

The demurrer was overruled, the defendants excepted, and the court ruled them to answer instant, which the defendants declined to do and elected to stand on their demurrer. The bill being taken as confessed, a decree was entered *pro confesso*, which, on the points raised by the demurrer, finds the amount due according to the terms and conditions of said bond to be \$5,350.76, and allows \$7 for obtaining an abstract; finds that \$245 is a reasonable sum to be allowed as solicitor's fees; orders that the said defendants, within five days from the entry of the decree, pay the sum of \$5,857.76, with interest thereon at the rate of five per cent. per annum from the entry of the decree, and also \$245 as solicitor's fees, in default



whereof that one of the masters in chancery shall sell the property in the manner prescribed by law.

Mr. Justice PHILLIPS delivered the opinion of the court :

The elaborate and able argument for appellants cannot be considered on what appears from this record, as the decree does not find or require judgment in any particular kind of money, but finds a sum due in dollars and cents. Even if it were assumed that contracts of this character could not be sustained, still, by the final decree the appellants are not prejudiced—they cannot be heard to complain in an appellate tribunal. If the character of money in which payment is contracted to be made be rejected from the contract, still the liability for payment in some kind of legal tender would exist, hence by the decree no prejudice resulted to appellants in overruling their demurrer.

The decree is affirmed.

Decree affirmed.

49     STATE OF ILLINOIS, }  
              *Supreme Court,*     } 88 :

I, Christopher Mamer, elected clerk of the supreme court in and for the northern grand division of the State of Illinois and keeper of the records and seal thereof, do hereby certify that the foregoing is a true copy of the opinion of the said supreme court in the above-entitled cause of record in my office.

This copy is not to operate as a mandate in any event. Mandate will be issued only on request and payment of costs.

In testimony whereof I have set my hand and affixed the seal of the said supreme court, at Springfield, Mar. 2, 1899.

[Seal of the Supreme Court, State of Illinois, Aug. 12, 1818.]

C. MAMER,  
*Clerk of the Supreme Court.*

50     Know all men by these presents that we, Robert Rae, Jr., and Elizabeth Rae, his wife, and Robert Rae, as sureties, are held and firmly bound unto Homestead Loan and Guarantee Company in the full and just sum of fifteen hundred dollars, to be paid to the said Homestead Loan and Guarantee Company, its certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Scaled with our seals and dated this — day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, at a term holden of the supreme court of the State of Illinois, in a suit depending in said court between said Robert Rae, Jr., and Elizabeth Rae, his wife, and against Homestead Loan and Guarantee Company, a decree was rendered against the said Robert Rae, Jr., and Elizabeth Rae, his wife, and the said Robert Rae, Jr., and Elizabeth Rae, his wife, having obtained a writ of error and filed a copy thereof in the clerk's office of the said court



to reverse the said decree in the aforesaid suit, and a citation directed to the said Homestead Loan and Guarantee Company, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, within thirty days from the date thereof:

Now, the condition of the above obligation is such that if the said Robert Rae, Jr., and Elizabeth Rae, his wife, shall prosecute said writ of error to effect and answer all costs if they fail to make their plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in the presence of—erasures and interlineations made before signing—

ROBERT RAE, JR. [SEAL.]  
ELIZABETH RAE. [SEAL.]  
ROBERT RAE. [SEAL.]

51 Taken and approved by me this 20th day of March, A. D. 1899.

JOSEPH N. CARTER,  
*Chief Justice of the Supreme Court, State of Illinois.*

Endorsed.

STATE OF ILLINOIS, )  
Cook County. }

I, Robert Rae, being duly sworn, deposes and says that he is a householder and resides in the city of Chicago, and is worth fifty thousand dollars over and above all just debts and liabilities.

ROBERT RAE.

Sworn and subscribed before me this 15 day of March, 1899.

[SEAL.]

ROBERT E. TURNEY,  
*Notary Public.*

[Endorsed:] Transcript of record in the United States Supreme Court. Robert Rae, Jr., *et al.*, plaintiffs in error, *vs.* Homestead Loan and Guarantee Company, defendant in error. Appeal from the supreme court of Illinois. Robert Ray, att'y for plaintiff in error.

Endorsed on cover: File No., 17,365. Illinois supreme court. Term No., 261. Robert Rae, Jr., & Elizabeth Rae, his wife, plaintiffs in error, *vs.* The Homestead Loan & Guarantee Company. Filed April 12th, 1899.